

MAY 25 2006

For The Northern Mariana Islands
By _____
(Deputy Clerk)

UNITED STATES DISTRICT COURT
NORTHERN MARIANA ISLANDS

Date: May 26, 2006
Time: 10:30 a.m.

The defendant objects to the admission of expert testimony pursuant to Fed. R. Evid. 16(a)(1)(G). The government did not intend to offer opinion testimony in this case. See United States v. Taghipour, 964 F.2d 908, 910 (9th Cir. 1992). In the event that the parties cannot

1 stipulate to the government's transcripts of the tapes in this case, the government will offer its
2 transcripts through its translator. The government maintains that this does not constitute opinion
3 testimony subject to Rule 16 but, in an abundance of caution, the government has provided
4 notice of its witness and copies of the transcripts pursuant to Rule 16. (See attached Letters to
5 Counsel.) The defendant has already retained a translator of her own. Accordingly, there is no
6 issue with regard to the potential introduction of opinion testimony by a government translator.

7 The government at this time does not intend to offer any other opinion testimony subject
8 to Rule 16(a)(1)(G). The government also notes that Rule 16 does not require prior notice of lay
9 opinion testimony offered pursuant to Fed. R. Evid. 701.

10 II. THE TAPES AND ENGLISH TRANSCRIPTS SHOULD BE ADMITTED.

11 The defendant objects to the admission of the tapes and transcripts for two reasons: the
12 government had not produced final versions of the transcripts and because the tapes¹ are
13 allegedly inaudible. Neither objection has any merit. First, the government has now produced
14 final transcripts of the entire telephone call and the excerpts of the portions of the meeting that it
15 intends to offer into evidence. Furthermore, defendant has had copies of the tapes for
16 approximately eight months and rough drafts of the transcripts for one approximately one month.
17 Second, the government has produced digital versions of the tapes to the defendants (and the
18 Court) that appear to have rectified any audibility problems. Any lingering objections that the
19 defendant may have to the audibility of the tape go to weight of the evidence, not admissibility,
20 and can be raised to the jury.

21 The Ninth Circuit sets forth four steps in reviewing the use of transcripts, in the event
22 that accuracy is not stipulated to: "whether the court reviewed the transcript for accuracy;
23 whether defense counsel was allowed to highlight alleged inaccuracies and to introduce alternate
24 versions; whether the jury was instructed that the tape, rather than the transcript, was evidence;
25 and whether the jury was allowed to compare the transcript to the tape and hear counsel's

26
27 ¹There are actually two tapes at issue in this case, both from June 24, 2005: a
28 consensually monitored telephone call; and a face to face meeting later that day. Only the latter
tape of the face to face meeting had audibility problems.

1 arguments as to the meaning of the conversations.” United States v Armijo, 5 F.3d 1229, 1234
2 (9th Cir. 1993); citing United States v. Chen, 754 F.2d 817, 824 (9th Cir. 1985).

3 In this case, the Court cannot review the transcripts for accuracy because the court does
4 not speak Chinese.² However, accuracy should not present an obstacle to admission for two
5 reasons. First, the government will offer witness testimony from a participant in the
6 conversation that the tape is accurate. Second, the Court can determine for itself whether the
7 tape is audible, without understanding Chinese. See United States v. Rrapi, 175 F.3d 742, 747
8 (9th Cir. 1999) (“There is a distinction, however, between audibility and understanding.”). The
9 third factor (that the tape is the evidence) does not apply here as well because the tape is in
10 Chinese. See United States v. Fuentes-Montijo, 68 F.3d 352, 355 (9th Cir. 1995) (“when faced
11 with a taped conversation in a language other than English and a disputed English translation
12 transcript, the usual admonition that the tape is the evidence and the transcript only a guide is not
13 only nonsensical, it has the potential for harm”). Nevertheless, the Court may employ the other
14 factors to ensure that use of these transcripts is proper.

15 III. THE GOVERNMENT DOES NOT INTEND TO INTRODUCE EVIDENCE SUBJECT
16 TO FED. R. EVID. 404(b).

17 The government has not provided notice of its intent to introduce evidence of other prior
18 acts pursuant to Fed. R. Evid. 404(b) and does not intend to introduce evidence subject to Rule
19 404(b). However, the government reserves the right to introduce evidence of intrinsic events as
20 relevant evidence subject to Fed. R. Evid. 402 and 403, not as other acts evidence subject to Fed.
21 R. Evid. 404(b). United States v. DeGeorge, 380 F.3d 1203, 1219 (9th Cir. 2004). Rule 404(b)
22 “is inapplicable, however, where the evidence the government seeks to introduce directly related
23 to, or inextricably intertwined with, the crime charged in the indictment.” United States v.
24 Lillard, 354 F.3d 850, 854 (9th Cir. 2003), citing United States v. Williams, 989 F.2d 1061, 1070
25 (9th Cir. 1993). The Ninth Circuit has identified two general categories of cases where other act
26 evidence is “inextricably intertwined” with the crimes with which the defendant is charged and
27

28 ²The Court has received digital copies of the tapes and the transcripts.

1 therefore outside of the requirements of Rule 404(b). See United States v. Vizcarra-Martinez, 66
2 F.3d 1006, 1012 (9th Cir. 1995). First, evidence may be admitted where it is part of the
3 transaction at issue in the indictment. Second, evidence may be admitted where “it was
4 necessary to do so in order to permit the prosecutor to offer a coherent and comprehensible story
5 regarding the commission of the crime; it is obviously necessary in certain cases for the
6 government to explain either the circumstances ... surrounding the commission of the crime.” Id.
7 at 1012-13.

8 The government does not at this time intend to offer evidence of other bad acts.
9 However, in the event that the defendant attempts to characterize evidence offered at trial as
10 “other bad act” evidence, the government reserves the right to offer such evidence as
11 “inextricably intertwined” evidence. See United States v. Daly, 974 F.2d 1215, 1216 (9th Cir.
12 1992) (“[The jury] cannot be expected to make its decision in a void – without knowledge of the
13 time, place and circumstances of the acts which form the basis of the charge.” (citations and
14 quotations omitted)).

15 IV. CONCLUSION

16 For the reasons stated above, the Government respectfully requests that the Court deny
17 the defendant’s motion in limine to exclude evidence.

18
19 Dated: May 25, 2006
20 Saipan, CNMI

21 LEONARDO M. RAPADAS
22 United States Attorney
23 District of the Northern Mariana Islands

24 By:

25 
26 TIMOTHY E. MORAN
27 Assistant U.S. Attorney
28

**U.S. Department of Justice**

*United States Attorney's Office
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May 24, 2006

By Hand Delivery

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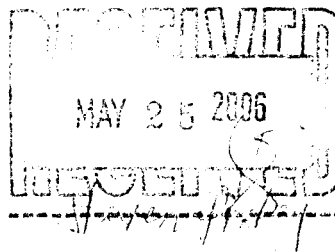
Re: United States v. Zheng, Ming Yan, et al., Cr. Case 05-00027

Dear Counsel:

Pursuant to Fed. R. Crim. 16(a)(1)(G), the government may offer testimony from Teresa Wang as its interpreter in this case. Ms. Wang is a certified Language Analyst and Quality Control Reviewer for the FBI, assigned to the Los Angeles Division. Her FBI certification includes taking courses and passing FBI examinations. She has been with the FBI since February, 2003. She also holds a Master's in Science degree in Information Science from the University of Illinois at Champagne.

Enclosed are documents bates stamped ZHE0284 through ZHE0298, which is the final translations of the telephone call. Also enclosed are documents bates stamped ZHE0299 through ZHE0301, which are the final translations of the portions of the meeting that we intend to offer at trial. We also intend to offer one more portion of the meeting, which we will produce on Thursday. If we cannot agree to a stipulated version, Ms. Wang testify that these transcripts are accurate English translations of the audio tapes.

We finally located a mini-disc player on island and made new digital copies from the original recordings, which should resolve your audibility concerns. Enclosed is a CD containing digital copies of the two recordings.

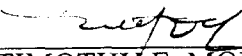


Finally, also enclosed for your review are the government's proposed statement of the case, elements of the charges, and a document bates stamped ZHE0175.

Sincerely,

LEONARDO M. RAPADAS
United States Attorney
Districts of Guam and the NMI

By:


TIMOTHY E. MORAN
Assistant U.S. Attorney

enc.

cc: Honorable Alex R. Munson (w/enc.)
Chief Judge, District Court of the NMI



U.S. Department of Justice

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May 25, 2006

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(670) 233-4716 (facsimile)

Re: United States v. Zheng, Ming Yan, et al., Cr. Case 05-00027


Dear Counsel:

Enclosed are documents bates stamped ZHE0408 through ZHE0414, which includes the final translation of the last remaining portion of the recording of the meeting that we intend to offer at trial.

Sincerely,

LEONARDO M. RAPADAS
United States Attorney
Districts of Guam and the NMI

By:


TIMOTHY E. MORAN
Assistant U.S. Attorney

enc.

cc: Honorable Alex R. Munson (w/enc.)
Chief Judge, District Court of the NMI

TTI US ATTORNEY'S OFFICE

FILE MODE	OPTION	ADDRESS (GROUP)	RESULT	PAGE
254	MEMORY TX	92354801	OK	P. 9/9

REASON FOR ERROR

E-1) HANG UP OR LINE FAIL
E-3) NO ANSWER

E-2) BUSY
E-4) NO FACSIMILE CONNECTION

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To: G. Anthony Long, Esq. **Date:** May 25, 2006
Fax #: 235-4801 **Pages:** 9 (including cover sheet)
From: Timothy E. Moran, AUSA
Subject: U.S. v. Zheng, Ming Yan, et al., CR 05-00027

COMMENTS: Letter and bates stamped ZHE0408 through ZHE0414 attached.

* * * COMMUNICATION RESULT REPORT (MAY.25.2006 2:18PM) * * *

FILE MODE	OPTION	ADDRESS (GROUP)	TTI US ATTORNEY'S OFFICE RESULT	PAGE
255	MEMORY TX	92334716	OK	P. 9/9

REASON FOR ERROR

E-1) HANG UP OR LINE FAIL
E-3) NO ANSWERE-2) BUSY
E-4) NO FACSIMILE CONNECTION

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Subject: U.S. v. Zheng, Ming Yan, CR 05-00027

COMMENTS:

Letter and bates stamped ZHE0408 through ZHE0414 attached.